IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5351 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUNIL BABUBHAI KAHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5351 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/10/2002

ORAL JUDGEMENT

The present petition has been filed by the the petitioner - detenu who has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 3/5/2002 passed by the Commissioner of Police, Vadodara City and he has been declared as dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the two offences registered against the detenu under Indian Penal Code. The learned advocate for the petitioner has further submitted the last offence is registered against the petitioner detenu on 16/3/2002 and the detaining authority has passed the impugned order of detention on 3/5/2002 and therefore, according to the learned advocate for the petitioner - detenu, there is a delay in passing the impugned order of detention.

4. I have heard learned advocate for the petitioner at length and learned AGP, Mr.IM Pandya for the respondents. I have also perused the material on record. Learned advocate for the petitioner has stated that two offences have been registered against the detenu and last case was registered against the petitioner detenu on 16/3/2002, and according to the learned counsel for the petitioner - detenu, there is a delay of more than one and half months in passing the order. Learned AGP has fairly admitted the same. In support of the arguments, learned advocate for the petitioner - detenu has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and

Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

5. It appears that last offence registered against the petitioner was dated 16/3/2002 and order of detention was passed on 3/5/2002 based on this offence and hence, there is a delay of more than one and half months in passing the order. No affidavit has been filed either by the detaining authority explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. In view of the above, the petition is allowed. The impugned order of detention dated 3/5/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Sunil Babubhai Kahar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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